

IN THE NATIONAL COMPANY LAW TRIBUNAL

DELHI BENCH (COURT NO. IV)

Company Petition No. IB-1527/ND/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/s. SMC CORPORATION (INDIA) PVT. LTD.

... Applicant/Operational Creditor

VERSUS

M/s. AKASH PACKTECH PRIVATE LIMITED

...Respondent/ Corporate Debtor

Order Pronounced on: 31.07.2020

CORAM:

Dr. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Ms. Kaveeta Wadia, Mr. Rohit Prasad,
Ms. Nidhi Mohan Parashar, Mr. Vikrant
Kumar, Advocates

For the Respondent : Ms. Chirag Gupta, Mr. Rajendra Beniwal,
Mr. Kumar Sumit, Mr. Manish Rao,
Mr. Bona Deshwal, Advocates

MEMO OF PARTIES

M/s. SMC CORPORATION (INDIA) PVT. LTD.

Having its office at:

B-94, Ashoka Enclave,
Piragarhi, Rohtak Road,
New Delhi-110087

...Applicant/Operational Creditor

VERSUS

M/s. AKASH PACKTECH PVT LTD

Having its registered office at:

F-51, 2 Floor, Vishwakarma Colony,
Lal Kuan, New Delhi- 110087

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with



Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. SMC Corporation (India) Pvt. Ltd. (for brevity 'Applicant'), having CIN No. U74899DL1995PTC064419, through its Consultant and authorized signatory Sh. Rajesh Chanana, authorizing him to file present application vide Board Resolution dated 25.03.2019, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Akash Packtech Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a company incorporated on 28.11.2002, under the provisions of Companies Act, 1956, having CIN No. U51909DL2002PTC117831, having its office at B-94, Ashoka Enclave, Piragarhi, Rohtak Road, New Delhi-110087.
3. The Respondent, namely M/s. Akash Packtech Private Limited, is a company incorporated on 28.11.2002, under the provisions of Companies Act, 1956 with CIN No. U51909DL2002PTC117831, having its registered office at F-51, 2 Floor, Vishwakarma Colony, Lal Kuan, New Delhi

110044.. The Authorised Share Capital of the respondent company is Rs.3,25,00,000/- and Paid Up Share Capital of the company is Rs.1,33,87,330/- as per Master Data of the company.

4. It is the case of the Operational Creditor, that it delivered Industrial materials to Corporate Debtor based on twelve purchase orders issued and/ or placed upon the Operational Creditor seeking delivery of the goods specified. The copy of purchase orders have been annexed by the OC along with the Application. Pursuant to the aforesaid purchase order(s) issued by the CD, materials came to be supplied by the Operational Creditor, following which twelve invoices were raised by the OC, the copies of which have also been annexed along with the application.
5. In spite of various requests made and reminders sent by the Applicant, the Respondent did not reply. On failure to pay the outstanding dues by the Respondent, the Applicant sent a demand notice dated 18.03.2019, under Section 8 of the



Insolvency and Bankruptcy Code, 2016 to the Respondent asking them to make the entire payment of unpaid debt to the tune of Rs. 10,74,239/- (Rupees Ten Lakhs Seventy Four Thousand Two Hundred Thirty Nine), along with interest @ 24% from the date of invoices falling due, within 10 days from receipt of the notice, failing which the Applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

6. The OC has filed affidavit of service, in its affidavit the OC states that the said notice was issued twice at the registered address of the CD on 19.03.2019 and on 04.04.2019. On each of the occasions the same returned back with note as "Insufficient Address" on 20.03.2019 and 09.04.2019. Further, on 19.03.2019 the demand notice was sent to the Corporate Debtor at the address mentioned in the purchase orders, the Demand Notice was also sent through email and by affixation at the registered office of the CD. The proof of which are annexed along with the application. The CD has not filed its reply to the said notice, nor raised any dispute by way



of notice any other. As no payment was coming, hence this application, seeking to unfold the process of CIRP.

7. Rs. 10,74,239/- (Rupees Ten Lakhs Seventy Four Thousand Two Hundred Thirty Nine), along with interest @ 24% from the date of invoices falling due. The date on which the debt became due as claimed by the Applicant is 05.07.2017. A part payment was received on 05.05.2017 and 01.02.2019.
8. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The Applicant has also filed affidavit of service wherein he states that the Respondent has been served through speed post on 09.11.2019 on both the addresses of the Corporate Debtor i.e., old address as well as new. Further, delivery has also been done through email on the registered email id of the Corporate Debtor on 30.10.2019. The relevant documents in this regard have been annexed along with the affidavit.
9. This Tribunal was constrained to proceed with the matter ex-parte against the Corporate Debtor as per order dated 19.11.2019, since the Corporate Debtor has not appeared,



though Section 9 notice and the present application were duly served on the Respondent and proof of service is filed by the applicant.

10. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
11. It is pertinent to note that the Applicant has placed on record all the invoices, stating that the Respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for Respondent to prove that there are no outstanding dues to be paid to the Applicant.
12. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
13. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of

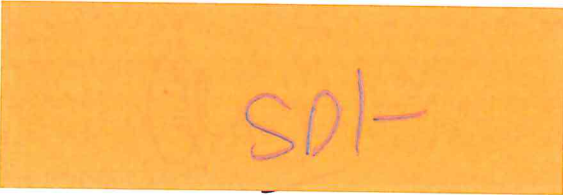
requirements under section 9(5) of the Code. Hence, the present application is admitted.

14. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
15. The Applicant had on 14.02.2020 mentioned and requested to file fresh Form 2, the same was allowed, and a time of 5 days was granted to the applicant for compliance. However, the same has not been done. In light of given circumstances this Bench appoints Mr. Jyoti Ranjan Tarafdar, as Interim Resolution Professional, having registration no. IBBI/IPA-001/IP-P01000/2017-2018/11647, email address is ip.jyotiranjana@gmail.com, as the IRP of the Respondent. The IRP is directed to take all such steps as are required, under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the I & B Code.
16. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Jyoti Ranjan Tarafdar to meet out the expenses to perform the

functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.


17. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
18. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than

seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.



SD/-

(HEMANT KUMAR SARANGI)
MEMBER (Technical)



SD/-

(Dr. DEEPTI MUKESH)
MEMBER (Judicial)